

CRS Report for Congress

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U.S. Use of Preemptive Military Force

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Summary

This report reviews the historical record regarding the uses of U.S. military force in a “preemptive” manner, an issue that emerged during public debates prior to the use of U.S. military force against Iraq in 2003. It examines and comments on military actions taken by the United States that could be reasonably interpreted as preemptive in nature. For purposes of this analysis a preemptive use of military force is considered to be the taking of military action by the United States against another nation so as to prevent or mitigate a presumed imminent *military* attack or use of force by that nation against the United States. The deployment of U.S. military forces in support of U.S. foreign policy, without their engaging in combat, is *not* deemed to be a preemptive use of military force. This review includes all noteworthy uses of military force by the United States since the establishment of the Republic. A listing of such instances can be found in CRS Report RL30172, *Instances of Use of United States Armed Forces Abroad, 1798-2001*. For an analysis of international law and preemptive force see CRS Report RS21314, *International Law and the Preemptive Use of Force Against Iraq*. This report will be updated if significant events warrant.

Background

During the summer and fall of 2002, the question of the possible use of “preemptive” military force by the United States to defend its security was raised by President Bush and members of his Administration, including possible use of such force against Iraq. In mid-September 2002, the Bush Administration published *The National Security Strategy of the United States* which explicitly states that the United States is prepared to use preemptive military force to prevent U.S. enemies from using weapons of mass destruction (WMD) against it or its friends or allies¹. The following analysis reviews the

¹ See speeches of President George W. Bush at West Point on June 1, 2002 at [<http://www.whitehouse.gov/news/releases/2002/06/20020601-3.html>]; and the UN on September 12, 2002 at [<http://www.whitehouse.gov/news/releases/2002/09/20020912-1.html>]; Washington Post, June 2, 2002, p. A1; Washington Post, September 13, 2002, p.A1. *The National Security Strategy of the United States of America* is found at [<http://www.whitehouse.gov/nsc/nss.html>]. Also see speeches of Vice President Dick Cheney before the National Association of Home (continued...)

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historical record regarding the uses of U.S. military force in a preemptive manner. It examines and comments on military actions taken by the United States that could be reasonably interpreted as preemptive in nature. For purposes of this analysis a preemptive use of military force is considered to be the taking of military action by the United States against another nation so as to prevent or mitigate a presumed *military* attack or use of force by that nation against the United States. The deployment of U.S. military forces in support of U.S. foreign policy, without their engaging in combat, is *not* deemed to be a preemptive use of military force. Preemptive use of military force is also deemed to be an action addressed at a specific and *imminent military* threat, requiring timely action²

By contrast, a “preventive war” would be a significant use of military force against a nation as a “preventive” action, to forestall a presumed *military* threat from that nation at some point in the future, whether months or years. Such an action would be outside the traditional parameters of the concept of preemptive use of military force. It would be a significant expansion of the customary understanding of the elements that define such an action. However, such an expansive view of military preemption is contained in the Bush Administration’s September 2002 U.S. National Strategy document, and in related public policy statements by senior Bush Administration officials. Thus, various instances of the use of force that are examined herein could, using a less stringent definition, be argued by some as examples of preemption by the United States. The discussion below is based upon our review of all noteworthy uses of military force by the United States since establishment of the Republic.

Historical overview. The historical record indicates that the United States has never, to date, engaged in a preemptive military attack, as traditionally defined, against another nation. And only once has the United States ever unilaterally attacked another nation militarily *prior* to its first having been attacked or *prior* to U.S. citizens or interests first having been attacked. That instance was the Spanish-American War of 1898. In that military conflict, the principal goal of United States military action was to compel Spain

¹ (...continued)

Builders on June 6, 2002 found at [<http://www.whitehouse.gov/vicepresident/news-speeches/speeches/vp20020606.html>], where he stated: “...we also realize that wars are not won on the defensive. We must take the battle to the enemy-and, where necessary, preempt grave threats to our country before they materialize.” And the Vice President’s speech before the Veterans of Foreign Wars National Convention on August 26, 2002 found at [<http://www.whitehouse.gov/news/releases/20020826.html>] where he noted that “...containment is not possible when dictators obtain weapons of mass destruction, and are prepared to share them with terrorists who intend to inflict catastrophic casualties on the United States.”

² It is important to note here the historic and traditional view of the United States government on what constitutes the legitimate use of preemptive military force in accordance with international law. This view was best articulated by then Secretary of State, Daniel Webster, in 1842, in diplomatic correspondence with the British Government. Webster stated that it was an act of self-defense permitting an intrusion into the territory of another state only in those “cases in which the necessity of that self-defense is instant, overwhelming, and leaving no choice of means and no moment for deliberation.” See letter from Secretary of State Daniel Webster to Lord Ashburton of August 6, 1842, reprinted in Moore, John Bassett, *A Digest of International Law*, Vol. II (1906), p. 412. For a detailed discussion of international law and preemptive use of military force see CRS Report RS21314, *International Law and the Preemptive Use of Force Against Iraq*, by David M. Ackerman.

to grant Cuba its political independence. An act of Congress, passed in April 1898, just prior to the U.S. declaration of war against Spain, explicitly declared Cuba to be independent of Spain, demanded that Spain withdraw its military forces from the island, and authorized the President to use U.S. military force to achieve these ends, if necessary.³ Spain rejected these demands, and an exchange of declarations of war by both countries soon followed thereafter.⁴ Although U.S. military actions against Spain were based on special U.S. foreign policy considerations, they occurred after war was formally declared, and cannot be fairly characterized as preemptive in nature. During the Cuban Missile crisis of 1962, preemptive use of military force to destroy Soviet missiles that had been introduced into Cuba was very seriously considered in the early days of the crisis, but the matter was ultimately resolved diplomatically. Although the United States did not use military force “preemptively,” it did deploy military forces as an adjunct to its diplomacy, while reserving its right to take additional military actions as it deemed appropriate.

The circumstances surrounding the origins of the Mexican War are somewhat controversial in nature—but the term preemptive attack by the United States does not apply to this conflict. During, and immediately following the First World War, the United States, as part of allied military operations, sent military forces into parts of Russia to protect its interests, and to render limited aid to anti-Bolshevik forces during the Russian civil war. In major military actions since the Second World War, the President has either obtained congressional authorization for use of military force against other nations, in advance of using it, or has directed military actions abroad on his own initiative in support of multinational operations such as those of the United Nations or of mutual security arrangements like the North Atlantic Treaty Organization (NATO). Examples of these actions include participation in the Korean War, the 1990-1991 Persian Gulf War, and the Bosnian and Kosovo operations in the 1990s. The use of military force against Iraq in 2003, while controversial within the international community, was justified by the United States, the United Kingdom and others, as an action necessary to enforce existing U.N. Security Council resolutions that mandated Iraqi disarmament. Yet in all of these varied instances of the use of military force by the United States, such military action was a “response,” *after the fact*, and was not preemptive in nature, as traditionally defined.

Central American and Caribbean interventions. This is not to say that the United States has not used its military to intervene in other nations in support of its foreign policy interests. However, U.S. military interventions, particularly a number of unilateral uses of force in the Central America and Caribbean areas throughout the 20th century were not preemptive in nature. What led the United States to intervene militarily in nations in these areas was not the view that the individual nations were likely to *attack*

³ Joint Resolution of April 20, 1898, [Res. 24] 30 Stat. 738.

⁴ There was no direct military attack by Spain against the United States prior to the exchange of declarations of war by the nations, and initiation of hostilities by the United States in 1898. See *Declarations of War and Authorizations for the Use of Military Force: Historical Background and Legal Implications*. CRS Report RL31133, by David M. Ackerman and Richard F. Grimmett. A notable event, the sinking of the U.S.S. *Maine* in Havana harbor, provided an additional argument for war against Spain for those advocating it in the United States. The actual cause of the sinking of the *U.S.S. Maine* in Havana harbor, even today, has not been definitively established. More recent scholarship argues that it was most likely *not* due to an external attack on the ship, such as the use of a mine by an outside party, but due to an internal explosion.

the United States militarily. Rather, these U.S. military interventions were grounded in the view that they would support the Monroe Doctrine, which opposed interference in the Western hemisphere by outside nations. U.S. policy was driven by the belief that if stable governments existed in Caribbean states and Central America, then it was less likely that foreign countries would attempt to protect their nationals or their economic interests through their use of military force against one or more of these nations.

Consequently, the United States, in the early part of the 20th century, established through treaties with the Dominican Republic (in 1907)⁵ and with Haiti (in 1915)⁶, the right for the United States to collect and disperse customs income received by these nations, as well as the right to protect the Receiver General of customs and his assistants in the performance of his duties. This effectively created U.S. protectorates for these countries until these arrangements were terminated during the Administration of President Franklin D. Roosevelt. Intermittent domestic insurrections against the national governments in both countries led the U.S. to utilize American military forces to restore order in Haiti from 1915-1934 and in the Dominican Republic from 1916-1924. But the purpose of these interventions, buttressed by the treaties with the United States, was to help maintain or restore political stability, and thus eliminate the potential for foreign military intervention in contravention of the principles of the Monroe Doctrine.

Similar concerns about foreign intervention in a politically unstable Nicaragua led the United States in 1912 to accept the request of its then President Adolfo Diaz to intervene militarily to restore political order there. Through the Bryan-Chamorro treaty with Nicaragua in 1914, the United States obtained the right to protect the Panama Canal, and its proprietary rights to any future canal through Nicaragua as well as islands leased from Nicaragua for use as military installations. This treaty also granted to the United States the right to take any measure needed to carry out the treaty's purposes.⁷ This treaty had the effect of making Nicaragua a quasi-protectorate of the United States. Since political turmoil in the country might threaten the Panama Canal or U.S. proprietary rights to build another canal, the U.S. employed that rationale to justify the intervention and long-term presence of American military forces in Nicaragua to maintain political stability in the country. U.S. military forces were permanently withdrawn from Nicaragua in 1933. Apart from the above cases, U.S. military interventions in the Dominican Republic in 1965, Grenada in 1983, and in Panama in 1989 were based upon concerns that U.S. citizens or other U.S. interests were being harmed by the political instability in these countries at the time U.S. intervention occurred. While U.S. military interventions in Central America and Caribbean nations were controversial, after reviewing the context in which they occurred, it is fair to say that none of them involved the use of "preemptive" military force by the United States.⁸

⁵ 7 UST 196.

⁶ 8 UST 660.

⁷ 10 UST 379.

⁸ For an excellent background discussion of U.S. policy toward the Caribbean and Central American nations during the first half of the 20th century see: Samuel Flagg Bemis, *A Diplomatic History of the United States*. New York. Holt, Rinehart and Winston, Inc. 1965, pp. 519-538. For a detailed historical study that provides valuable insights and commentary on U.S. actions (continued...)

Covert action. Although the use of preemptive force by the United States is generally associated with the *overt* use of U.S. military forces, it is important to note that the United States has also utilized “covert action” by U.S. government personnel in efforts to influence political and military outcomes in other nations. The public record indicates that the United States has used this form of intervention to prevent some groups or political figures from gaining or maintaining political power to the detriment of U.S. interests and those of friendly nations. For example, the use of “covert action” was widely reported to have been successfully employed to effect changes in the governments of Iran in 1953, and in Guatemala in 1954. Its use failed in the case of Cuba in 1961. The general approach in the use of a “covert action” is reportedly to support local political and military/paramilitary forces in gaining or maintaining political control in a nation, so that U.S. or its allies interests will not be threatened. None of these activities has reportedly involved significant numbers of U.S. military forces because by their very nature “covert actions” are efforts to advance an outcome without drawing direct attention to the United States in the process of doing so.⁹ Such previous clandestine operations by U.S. personnel could arguably have constituted efforts at preemptive action to forestall unwanted political or military developments in other nations. But given their presumptive limited scale compared to those of major conventional military operations, and also that they were not used to preempt an imminent military attack on the United States, it seems more appropriate to view U.S. “covert actions” as adjuncts to more extensive U.S. military actions in support of U.S. foreign policy. As such, these U.S. “covert actions” do not appear to be true case examples of the use of preemptive *military* force by the United States.

Cuban missile crisis of 1962. The one significant, well documented, case of note, where preemptive military action was seriously contemplated by the United States, but ultimately not used, was the Cuban missile crisis of October 1962. When the United States learned from spy-plane photographs that the Soviet Union was secretly introducing nuclear-capable, intermediate-range ballistic missiles into Cuba, missiles that could threaten a large portion of the eastern United States, President John F. Kennedy had to determine if the prudent course of action was to use U.S. military air strikes in an effort to destroy the missile sites before they became operational, and before the Soviets or the Cubans became aware that the U.S. knew they were being installed. While the military preemption option was seriously considered, after extensive debate among his advisors on the implications of such an action, President Kennedy undertook a measured but firm approach to the crisis that utilized a U.S. naval “quarantine” of the island of Cuba to prevent receipt of additional missile shipments from the Soviet Union as well as military supplies and material for the existing missile sites, while a diplomatic solution was aggressively pursued. At the same time, the U.S. reserved the right to employ the full

⁸ (...continued)

taken toward Caribbean and Central American countries see chapters 9, 11, and 12 in Samuel Flagg Bemis, *The Latin American Policy of the United States*. New York. Harcourt, Brace & World, 1943. [reprinted in paperback in New York, by W.W. Norton & Company, Inc., 1967].

⁹ Section 503(e) of the National Security Act of 1947, as amended, defines covert action as “An activity or activities of the United States Government to influence political, economic or military conditions abroad, where it is intended that the role of the United States Government will not be apparent or acknowledged publicly.”

range of military actions should diplomacy fail. This approach was successful, and the crisis was peacefully resolved.¹⁰

Iraq War of 2003. The case of the Iraq War of 2003, the United States has used significant military force against that nation even though the U.S. was not attacked first by Iraq. Various public speeches made by the Bush Administration during the summer and fall of 2003 noted that the United States was prepared to engage in “preemptive” military action against unfriendly nations in advance of their becoming an “imminent” military threat to the U.S. In September 2002, the Bush Administration published *The National Security Strategy of the United States of America* which explicitly states that the United States is prepared to use preemptive military force to prevent enemies of the United States from using weapons of mass destruction (WMD) against it or its allies and friends. The timing of the release of this strategy document, together with statements of senior Bush Administration officials regarding the potential threat to the U.S. that Iraq’s WMD program posed, led to speculation that Iraq could be the first case where the expansive approach to use of preemptive military force would be applied. Subsequently, the Bush Administration sought and obtained passage of U.N. Security Council Resolution 1441 on November 8, 2002, which, among other things, noted that Iraq was still in material breach of its obligations under prior U.N. Security Council resolutions to destroy and not to seek to obtain various proscribed weapons and capabilities. UNSCR 1441 further noted that “serious consequences” would result from failure of Iraq to comply unconditionally with its obligations contained in the U.N. Resolutions.¹¹

When President Bush launched U.S. military action against Iraq on March 19, 2003, he stated he was doing so, with coalition forces, to enforce existing UN Security Council Resolutions that had been violated by Iraq since the Gulf War of 1990-1991—Security Council Resolutions that expressly contemplated the use of force should Iraq not comply with them—and also to protect the security of the U.S. In a March 19, 2003 report to Congress on the issue, President Bush noted his conclusion and determination that further diplomatic efforts to enforce the U.N. imposed obligation that Iraq destroy its WMD would not succeed, thus requiring the use of military force to achieve Iraqi disarmament. The President did not explicitly characterize his military action as an implementation of the expansive concept of preemptive use of military force against rogue states with WMD contained in his National Security Strategy document of September 2002.¹² However, as U.S. military action was justified to protect the security of the United States from a *prospective*, but not *imminent* threat of military action by Iraq, it could be argued that, measured against the traditional concept of preemptive use of military force, this was an act of “preventive war” by the United States.

¹⁰ For detailed background regarding the issues surrounding the possible use of “preemptive” military force against the Soviet missile sites being established in Cuba, and the deliberative process engaged in by President Kennedy and his key advisors, see the published transcripts of tape recordings made during their White House meetings in *The Kennedy Tapes: Inside the White House during the Cuban Missile Crisis*. Ernest R. May and Philip D. Zelikow (eds.). Cambridge, Massachusetts. Harvard University Press, 1997.

¹¹ [<http://ods-dds-ny.un.org/doc/UNDOC/GEN/N02/682/26/PDF/N0268226.pdf?OpenElement>]

¹² [<http://www.whitehouse.gov/news/releases/2003/03/20030321-5.html>]; House Document 50, 108th Congress, 1st session.